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ORACLE AMERICA, INC.

21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA
23 SAN FRANCISCO DIVISION

24 ORACLE AMERICA, INC.
25 Plaintiff,
v.
26 GOOGLE INC.
27 Defendant.

Case No. CV 10-03561 WHA
**[PROPOSED] ORDER GRANTING
ORACLE'S MOTION IN LIMINE #3
REGARDING DR. ASTRACHAN**
Dept.: Courtroom 8, 19th Floor
Judge: Honorable William H. Alsup

1 This Court has read and considered Plaintiff Oracle America, Inc.'s Motion in Limine #3
2 Regarding Dr. Astrachan, as well as any Opposition thereto and Reply in support thereof, and any
3 and all additional supporting papers.

4 Based thereon [and on statements made by counsel at the hearing on the Motion], IT IS
5 HEREBY ORDERED THAT Oracle's Motion is GRANTED.

6 Dr. Astrachan's analysis, opinions, and conclusions are stricken and his testimony on
7 those matters identified in Oracle's motion are excluded under Federal Rules of Evidence 402,
8 403, 702, 703, and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and its
9 progeny.

10 Specifically, Dr. Astrachan's opinions and conclusions related to the fair use factor one
11 sub-issues of transformative and commercial use, and his testimony on the same, are hereby
12 excluded as legally irrelevant and prejudicial as they are inconsistent with applicable law,
13 including the appellate opinion of the Federal Circuit in this case, and because Dr. Astrachan, as a
14 computer scientist, offers opinions on economic and commercial issues that he is not qualified to
15 render. Dr. Astrachan is Defendant Google's only expert witness on fair use factor one, therefore
16 this Order excluding Dr. Astrachan's opinions and testimony, along with Google's admissions
17 and the Federal Circuit's decision on factor one, precludes Google from offering evidence or
18 testimony at trial that its use of Java SE is not commercial and not transformative.

19 Dr. Astrachan's analysis, opinions, and conclusions that Google was forced to copy the
20 declaring code or the structure, sequence, and organization of the 37 Java API packages in order
21 to access the functionality of the Java programming language, and his testimony on the same, are
22 excluded as irrelevant, prejudicial, and contrary to the appellate opinion of the Federal Circuit and
23 Google's prior admissions in this case.

24 Dr. Astrachan's analysis, opinions, and conclusions related to fair use factor four, the
25 effect on the potential market for or the value of Java SE, and his testimony on the same, are
26 hereby excluded as unreliable and prejudicial because Dr. Astrachan, a computer scientist, is not
27 qualified to render opinions on economic and commercial issues, and he applies no discernible,
28 repeatable, or generally accepted methodology.

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IT IS SO ORDERED.

THE HONORABLE WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE